

This is the second time this matter has been brought before the Board. Claimant appealed the original August 3, 2006 preliminary hearing Order of Judge Barnes. At that time, claimant was requesting authorization for a complete right knee replacement. The Administrative Law Judge (ALJ) denied claimant's request, finding that claimant had suffered a long history of arthritis and degenerative joint disease and claimant's need for the knee replacement surgery was not due to the alleged work-related injury. A Board Member, in an October 31, 2006 decision, affirmed the ALJ's denial of benefits, finding

that claimant had failed to prove that her ongoing problems were related to her work activities.

Claimant's injury history with this employer is significant. Claimant originally suffered a work-related injury on February 28, 1995, when she fell while going down a flight of steps at work. Claimant suffered a broken left leg and hurt her right knee and low back. The parties entered into an Agreed Award on this original claim (Docket No. 210,946), and the entire award was paid out. The parties then entered into a friendly settlement for that right knee injury on August 25, 1997, at which time claimant was paid an additional \$10,000 to settle all issues remaining in the case, including future medical treatment for her work-related right knee injuries.

Claimant now contends that she sustained an aggravation of her preexisting conditions and that her current need for treatment for her right knee, left knee and low back are new injuries and not the natural and probable consequence of the prior injuries.

The injury and treatment history contained in the Board's Order of October 31, 2006, are identical to the history utilized in this dispute. At the preliminary hearing held on November 14, 2006, claimant provided no new testimony for the ALJ's and the Board's review. Claimant did provide medical records from Pat D. Do, M.D., regarding a right ring finger trigger finger release, the significance of and the need for which is not clear. Dr. Do's history of injury also includes discussion of a left knee twisting injury two months prior to a February 8, 2005 examination. The medical notes of August 1, 2006, also discuss a need for a knee replacement, a recommendation made originally by Bruce R. Buhr, M.D., to claimant after the 1995 work-related injuries. Dr. Do's report of August 1, 2006, does indicate that claimant's right knee pain is work related. However, Dr. Do's report supplies no additional explanation.

Claimant provided the August 29, 2006 report of Pedro A. Murati, M.D., board certified in physical medicine and rehabilitation. Dr. Murati's history includes discussion of claimant's long history with respondent; an injury suffered on February 28, 1995, with subsequent treatment for her right and left legs and low back; and a job modification after that February 1995 work-related injury. Claimant advised the doctor that after being placed in a segregation unit, she was required to "take the stairs all day."¹ Dr. Murati does discuss Dr. Do's treatment of claimant for a work-related injury on December 19, 2005, but provides no explanation as to the type or extent of injury alleged. Dr. Murati then determines that "[t]his patient's current diagnoses are within all reasonable medical probability a direct result from the work-related injury that occurred on 12-19-05 during her

¹ P.H. Trans. (Nov. 14, 2006), Cl. Ex. 1.

employment with El Dorado Correctional Facility.”² Dr. Murati’s opinion appears to encompass the right knee, left leg and low back.

Claimant’s allegations of work-related aggravations are identical to the allegations raised to the ALJ and the Board in 2006. Claimant’s long history of injuries and need for treatment has not changed. Dr. Do reports claimant’s right knee condition is work related, but provides no explanation as to when the right knee injury occurred and to which aspect or time frame of claimant’s employment the knee injury is connected. That work-related right knee injury history was rejected by the ALJ and the Board in 2006, and by the ALJ again at this time. This Board Member finds no new evidence in this record to change the Board’s prior determination on that issue.

The ALJ awarded claimant medical treatment for the injuries to claimant’s left leg and low back. In the Order, the ALJ provided no explanation for the award of medical treatment for the left leg and low back, merely finding that claimant had satisfied her burden of proof.

The new medical evidence provided in this matter includes only the August 29, 2006 report of Dr. Murati. In that report, Dr. Murati discusses an injury on December 19, 2005, but provides no explanation as to the type or extent of injury or injuries and how they originate from claimant’s employment.

Considering claimant’s long history of bilateral leg and back complaints and the long-standing need for medical treatment, this Board Member concludes that claimant has failed to meet her burden of proof that her current condition was caused or aggravated by her work-related activities. Therefore, the Order of the ALJ is reversed with regard to the left leg and low back.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, it is the finding, decision, and order of this Appeals Board Member that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated December 12, 2006, should be, and is hereby, affirmed with regard to the denial of benefits for the right leg, but reversed with regard to the award of benefits for the left leg and low back.

² *Id.*

³ K.S.A. 44-534a.

IT IS SO ORDERED.

Dated this ____ day of February, 2007.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
John C. Nodgaard, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge